IN THE HIGH COURT OF BOMBAY AT GOA
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WRIT PETITIONS NO. 32 OF 1997 & 436 OF 1998

WRIT PETITION NO. 32 OF 1997

Mrs. Maria Judita Fernandes,
near Railway Station,
Majorda, Salcete, Goa. ... Petitioner

Versus

1. St. Anthony's Primary
School, Majorda, Goa,
through its Manager,
Officiating at Majorda,
Goa,

2. Chairman, Managing Committee,
St. Anthony's Primary
School, Majorda, Salcete, Goa,

3. Director of Education,
Government of Goa, 18th
June Road, Panaji, Goa,

4. Asst. Director of Education,
South Educational Zone,
Near Holy Spirit Church,
Margao, Goa,

5. Mrs.Socorina Baptista,
of major age, service,
c/o Franky D'Souza,
P.O. Box 160,
15452 DAsman Kuwait,(A.G.),

6. Mrs. Philomena D'Costa,
Near Railway Station,
Majorda, Salcete, Goa, and

7. Administrative Tribunal, Goa,
Panaji, Goa. ... Respondents.

Shr S. G.Dessai, Senior Advocatw with Shri Rohit B. D'Sa, advocate for the petitioner.

Shri J. Godinho, advocate for respondent nos. 1 and 2.

Smt. Winnie Coutinho, Govt.Advocate for respondent nos. 3 & 4.

WRIT PETITION NO. 436 OF 1998

Mrs. Maria Judita Fernandes,
Near Railway Station,
Majorda, Salcete, Goa. ... Petitioner

Versus

1. Mrs. Socorina Baptista,
of major age, service, r/o
Arcsona wado near masundi
ground, Majorda, Salcete, Goa,

2. St. Anthony's Primary School,
Majorda, Goa, through its
Manager officiating at
Majorda, Goa,

3. Director of Education,
Government of Goa,
18th June Road,
Panaji, Goa, and

4. Mrs. M. V. Deo, Dy.
Education Officer SEZ,
Education Department,
Margao, Goa. ... Respondents.

Shri S. G.Dessai, Senior Advocate with Shri Rohit B. D'Sa, advocate for the petitioner.

Shri J. Godinho, advocate for respondent no.2.

Smt. Winnie Coutinho, Govt. Advocate for respondent nos.3 and 4.

CORAM : F. I. REBELLO &
P. V. HARDAS, JJ.

DATE : 17th June, 2003.

ORAL JUDGMENT (Per Rebello, J.)

The petitioner, a Primary Teacher, aggrieved by the fixation of her seniority in the first respondent School and further action of the first respondent school in terminating her services as a Primary Teacher, has filed the present petition.

The first relief sought is to quash and set aside the seniority list at Exh. "E" to the petition, wherein the petitioner is shown at sr. no.14; the Order dated 9th October, 1995 of the Deputy Director of Education, maintaining the seniority and consequent Order of termination by letter dated 26th February, 1996. A further consequential relief is to set aside the Judgment and Order of the Administrative Tribunal dated 31st October, 1996, in Education Appeal No.3/96 whereby the Order of termination dated 6th February, 1996 has been upheld. There is a further direction sought that the petitioner be shown senior to respondent in the order of seniority. It is not necessary to refer to the other reliefs, as admittedly, relief in the nature of prayer clause (d) cannot be granted by this Court and the other reliefs are consequential if the petitioner succeeds in the present petitions.

From the record it is seen that consequent to the decision of the State Government to grant aid to primary schools which switched over to regional languages, respondent no.1 school also did so. In terms of the Government Notification the number of teachers in respect of whom salary grants would be released was also set out, considering the number of students in the school. Insofar as respondent no.1 school is concerned, the number of teachers who were entitled to be paid salary grant was fixed at thirteen. The petitioner, in the list as on 25th September, 1991, was shown

at sr. no.14; and date of appointment as shown is 16th June, 1988. That fixation of seniority came to be challenged before the Administrative Tribunal, which set aside the said Order. Subsequent thereto a Committee was formed under the chairmanship of Mr. Bhat. That Committee scrutinized the cases not only of primary teachers of respondent no.1 school, but also cases in other schools and after considering the facts fixed the seniority in the school. The seniority as fixed for respondent no.1 school was the same as was earlier fixed by the management of respondent no.1. Pursuant to fixation of seniority, the services of the petitioner herein came to be terminated as she was surplus.

2. It is not necessary to advert to the various other orders except the final order of termination dated 6th February, 1996, which was the subject-matter of appeal, being Education Appeal No.3/96. The Administrative Tribunal by its judgment dated 31st October, 1996, after hearing the parties held that the termination was legal and consequently no relief could be granted in favour of the petitioner herein. The petitioner pursuant to interim orders, including order of this Court and subsequent to long leave granted to respondent no.6 in Writ Petition no.32/97, continues to be in service not in respondent no.1 school, but in another school run by the Diocesan Education Society. In the respondent School there has been a fall in the number of students and consequently some teachers senior to the petitioner have also

become surplus. The petitioner has also challenged the fixation of seniority of respondent no.6 in this petition. The petitioner has also relied upon Rule 34 of the Education Rules to contend that the School is run by a Society and, as such, there ought to be a common seniority list.

3. We may now consider Writ Petition No.436/98. The reliefs in this petition are for a direction or a writ to direct respondent no.3 in this petition, namely the Director of Education and Deputy Education Officer SEZ to hold enquiry in the matter of respondent no. 1 being in private service during the long term of leave period in a Pakistani school at Kuwait and a further writ of mandamus to direct the respondent nos. 2, 3 and 4 to put respondent no.1 under suspension during the pendency of the aforesaid enquiry.

4. On behalf of respondent no.2, an affidavit has been filed by the Manager Fr. Remedios B. Furtado. In para 3 of the affidavit in reply, it is pointed out that respondent no.2 had conducted an enquiry regarding unauthorized absence of respondent no.1. It is further pointed out that the Disciplinary Authority, after considering the enquiry report, awarded punishment as set out therein. The documents relied upon in the enquiry have also been set out therein. On behalf of the respondent no.2, learned counsel also points out that respondent no.1 has been granted long leave of five years. There is a document

annexed to the reply itself dated 14th August, 1998, addressed by the Assistant Director of Education to the Manager of the School. In that document it is set out that there are no leave rules which have been made applicable to Primary School Teachers and hence there is no question of availing of POL for five years. It is further pointed out that leave without pay can be granted to Primary Teachers exceeding five years. On behalf of respondent no.2, learned counsel points out that the school has granted respondent no.1 leave of five years and that period of five years has yet to expire. Considering the above and the fact that respondent no.2 has granted leave to respondent no.1, it would not be for this Court to interfere into the matter as at least in this petition this Court cannot go into that issue. The petitioner's case had to be considered as of the year 1991. The second relief of suspension cannot also be directed by this Court. That is for the Management and the Disciplinary Authority to consider. No such reliefs can be granted. In other words, the relief as sought for in Writ Petition No.436/1998 cannot be granted.

5. We, however, find from the record that the petitioner in both the petitions, on account of interim reliefs either by the Administrative Tribunal, or this Court, has been continuing in service. Presently, she is posted in some other school run by the Diocesan Education Society. The leave vacancy of respondent no.6 in Writ Petition no.

436/1998 has not been filled in by any other teacher, through respondent no.6 by herself has been surplus in the School. In the light of that the Management of the Diocesan Education Society to continue the petitioner against any available vacancy. We make it clear that this would not be at the cost of any other teacher, senior to the petitioner and who is already in regular employment. We further direct that in the event there are regular vacancies, preference should be given to the petitioner to be absorbed or continued in any vacancy, without resorting to direct recruitment for that vacancy.

With the above directions, the petitions stand disposed off. Rule discharged with the directions as aforestated. There shall be no order as to costs.

F. I. REBELLO, J.

P. V. HARDAS, J.

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